

December 5, 2002

Re: Proceeding 02-230

I am director of the Center for Technology Studies at the Pacific Research Institute, a non-profit, San Francisco-based public policy think tank dedicated to promoting individual freedom and personal responsibility. This letter is being submitted to contribute to educating the public about copyright issues.

As you know, broadcast flags are a series of digital bits that are embedded in a television program or movie to indicate that the content should not be redistributed. The problem with the flags is that they depend on the hardware running the program (a TV or computer, for instance) to follow the instructions. If the program is broadcast to a TV that does not recognize the broadcast flags, then this method of copy protection won't work.

The FCC has become involved in considering this issue, as I understand it, because Hollywood has said that it will not allow its movies to be broadcast on DTV unless copy protection is assured. Broadcasters argue that they cannot convince consumers to invest in DTV receivers and equipment unless they offer Hollywood movies. Therefore, the conclusion is that broadcasters cannot roll out DTV and give back valuable spectrum until the perceived piracy problem is fixed.

In this consideration of this issue, I hope the following ideas will be noted.

There are many reasons why any new regulations governing technology standards are a mistake, but perhaps the most important is that government involvement would stifle innovation in the market for anti-copying technologies. One of the reasons that Silicon Valley has so far opposed many of Hollywood's schemes for copy protection is that they are still looking for the best way to deal with the problem.

Fighting piracy is not just a matter of putting an end to all digital copying – if that were the case, the problem would already be solved. The issue instead is how illegal copying can be prevented while still allowing legitimate copying for personal use. This is a more difficult question that should be worked out by many different entrepreneurs looking for the best solution.

Central planning of market functions has never been a good idea, and enshrining one set of technology standards in law would serve as a disincentive for new technologies to be created. It could even make piracy a larger problem than expected because competition to produce the best anti-theft technology would be trapped in a regulations-based time capsule while digital thieves continue up-to-date work at breaking the system.

Currently, competition between rival anti-piracy solutions is fierce, but it is also a political weakness in the technology community that some Hollywood types are trying to exploit. Some tech firms, recognizing that government could be an effective way to force

consumers to use their technology have embraced the idea of using law to mandate standards.

This led Philips Consumer Electronics North America CEO Lawrence J. Blanford to complain to Congress that the Broadcast Protection Discussion Group (BPDG), an inter-industry group whose recommendations the FCC is considering, “has been taken over by a small group of companies.”

Blanford went on to say in a press release that he doubts that the group “will allow for serious consideration or adoption of technology solutions of equal merit presented by other interested parties.” If a big company like Phillips can be locked out of the group, small entrepreneurs that drive our economy don’t have a chance when government gets involved.

Another reason why government technology mandates are generally a poor idea is that it socializes costs that should be borne directly by those requesting them. If government forces tech firms to add special engineering requirements to their products, the extra labor and parts required in the design change unfairly transfers the business costs from content producers to hardware producers. At a time when the nation’s technology industry is fighting to stay alive, this is one new tax that the industry and consumers can do without.

Protecting intellectual property and recovering unused spectrum are two very important goals, but government technology mandates are not the way to achieve them.

Sincerely,

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